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Federal Communications Commission
Office of the Secretary

June 6, 2012

Ex Parte

Marlene H. Dortch
Secretary
Federal Communications Commission
445 12th Street, SW
Room TW-A325
Washington, DC 20554

Re: Special Access Rates for Price Cap Local Exchange Carriers, WC Docket No. 05-25 and RM-10593: REDACTED

Dear Ms. Dortch:

I am writing to supplement the record in this proceeding regarding Verizon's pro-competitive special access discount plans and the marketplace for high-capacity services.

Discount Plans

We have explained that Verizon offers many different special access discount plans that provide substantial benefits to a wide range of special access purchasers.[1] Verizon developed these plans to provide customers with more choices to meet their needs. They benefit both Verizon and its customers because they reflect the economic efficiencies associated with the additional predictability and certainty they provide.

One of Verizon's more popular discount plans is the Commitment Discount Plan (CDP). The CPD is a regional plan that offers customers a choice between terms ranging from two to seven years for DS1 and DS3 special access services. Verizon offers the CDP under its FCC Tariff Nos. 1 and 11. Tariff No. 1 covers the region that includes former Bell Atlantic areas, and Tariff No. 11 covers the region that includes former NYNEX areas. Generally speaking, a customer can subscribe to a CDP in one of those regions and can subscribe to other discount plans in other regions. Within a tariff or region, however, Verizon's customers that subscribe to the CDP must include in the CDP all of the DS1 and DS3 channel terminations that they choose to purchase from Verizon in that region, and they receive a discount based on the length of the term commitment they choose to make. The longer the term commitment the customer makes, the larger the discount that they receive.

[1] *See* Letter from Donna Epps, Verizon, to Marlene H. Dortch, FCC, WC Docket No. 05-25 & RM-10593 (March 27, 2012).

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For example, if a customer subscribes to the CDP under FCC Tariff No. 1, that customer must include in that CDP all of the DS1 and DS3 channel terminations it chooses to purchase from Verizon in the former Bell Atlantic area. In the former NYNEX area, the customer can also subscribe to a CDP plan with the same requirement or it can sign up for other available discount plans in FCC Tariff No. 11. In the former GTE areas, which FCC Tariff Nos. 14 and 16 cover, the CDP is not available, and the customer can choose from other available discount plans under those tariffs.

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Verizon created the CDP and other term-and-volume plans to respond to customers who sought more flexibility to move circuits to and from Verizon. In contrast to the term-only discount plans, the term-and-volume discount plans like the CDP allow customers to move some circuits to other carriers or to disconnect them without worry, as long as they maintain their minimum commitment level. Verizon requires customers that subscribe to its term-and-volume plans like the CDP to include in the plan all of the DS1 and DS3 channel terminations that they choose to purchase from Verizon in the relevant region. This is because it is much easier for both parties to administer a term-and-volume plan this way, instead of having to track which circuits are part of the plan and which are not. Responding to its customers, Verizon developed the CDP in part to make circuit management easier, and modifying the CDP or other term-and-volume plans to allow customers to enroll only some of their volumes would detract from that benefit. Furthermore, Verizon's systems are not built to support an arrangement in which only some of a customer's volume with Verizon is enrolled in a term-and-volume plan, and one can easily envision disputes that could arise over whether a certain circuit is or is not enrolled in a plan. The inherent benefits of porting circuits to and from Verizon and the ease of circuit management within the plans are best achieved when customers enroll all of their Verizon circuits under the applicable plans in each region in which they subscribe to them.

In addition to wholesale customers, some retail customers also purchase special access from Verizon under our generally available discount plans, although they typically purchase from available term-only plans. The typical retail customer's term length varies across Verizon's regions, but more of Verizon's retail special access revenue from term plans comes from **[BEGIN HIGHLY CONFIDENTIAL]** **[END HIGHLY CONFIDENTIAL]** than any other term length.

Pricing Flexibility Contracts

We have explained that Verizon also offers individually negotiated pricing flexibility contracts where permitted, because some customers seek individualized discounts and other terms different from those that Verizon's generally available discount plans contain. These contract tariffs typically provide unique provisions, rates, and discounts over and above what customers get under Verizon's other discount plans. Like Verizon's term-and-volume plans, these contracts generally provide discounts based on a term of years, and also a negotiated minimum annual revenue commitment or volume commitment.

Verizon has negotiated or created about eighty-one unique pricing flexibility contracts with wireless providers, enterprise customers, and carrier customers. Verizon publishes each contract in its access service tariffs and makes them available to all "similarly situated" customers, and each is subject to Section 201's just and reasonableness standard.[2] The contract tariffs have a subscription period during which similarly situated customers can subscribe. These periods typically range from 30 to 60 days, although one subscription period was longer than two years. Verizon has created many pricing flexibility contracts over the years. Although Verizon has not tracked how many customers have taken advantage of our prior offerings, in at least several cases multiple customers have subscribed to an available contract tariff.

Shortfalls

Consistent with the economic rationale behind Verizon's term-and-volume discount plans, customers who choose a plan option that requires a volume commitment agree to maintain the levels to which they committed in exchange for the attractive discounts and other beneficial features. If customers do not maintain those levels, they are subject to shortfall charges reflecting the fact that Verizon will no longer receive the predictability for which it bargained. As we have explained, even when customers pay shortfall charges, in practice they generally retain a significant amount of the discounts they had already received, [3] and these shortfall charges typically result in the customer paying only what it would have paid had it not been for the shortfall.

When Verizon computes shortfall liability charges, it does not include interest. The same is true for termination liability charges associated with terminating discount plans early.

Verizon bases the shortfall liability charges under its generally available discount plans on the shortfall amount, not on the discount plan's entire base. In other words, if a customer has 89 circuits subscribed to a discount plan, and its commitment level is 90 circuits, Verizon will compute the shortfall liability on only the one circuit (per circuit shortfall charge multiplied by one), and not on a larger base. With respect to individually negotiated pricing flexibility contracts, the majority of those contracts do not include shortfall charges, sometimes because there is no minimum volume commitment, and other times because there simply are no shortfall charges in the contract.

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[2] FCC No. 1, Section 21 – For the former Bell Atlantic serving areas; FCC No. 11, Section 32 – For the former NYNEX serving areas; FCC No.14, Section 21 – For the former GTE (western regions) serving areas; and FCC No. 20, Section 9 – For all the applicable Verizon serving areas.

[3] *See See* Reply Comments of Verizon and Verizon Wireless, WC Docket No. 05-25 & RM-10593, at Exhibit B: Declaration of Quintin Lew and Anthony Recine ¶¶ 29-32, 40 (Feb. 24, 2010, re-filed Mar. 19, 2010); *see also* Letter from Donna Epps, Verizon, to Marlene H. Dortch, FCC, WC Docket No. 05-25 & RM-10593, at 8 (Aug. 16, 2010).

Where individually negotiated contracts do include shortfall charges, in some of those cases the shortfall charges apply to all of the subscribed circuits. Those shortfall charges are tied to the incremental benefit that the customer receives via the contract, however, over and above what the customer receives under Verizon's generally available discount plans (customers can have both a generally available discount plan and an individually negotiated contract that provide discounts based on the same DS1s and DS3s). For example, a customer may subscribe to the CDP and may also enter into a pricing flexibility contract under which it receives an additional discount if it maintains a certain minimum revenue commitment. If the customer does not meet its minimum revenue commitment, the revenue-related shortfall charge could apply across the subscribed base. The customer's potential shortfall charges under the CDP to which it subscribes would be unaffected, however, and the contract-based shortfall charge would apply only to the shortfall amount associated with the overlay pricing flexibility contract.

New Technologies

The marketplace for high-capacity services is changing rapidly. Robust wireless broadband usage has increased the demand for high-capacity services, and as a result the marketplace is undergoing a fundamental shift away from TDM-based DS1 and DS3 special access services as customers look to newer technologies that a variety of new and existing competitors offer. As a result, as we have explained, Verizon's demand for DS1 special access services measured by channel terminations declined **[BEGIN HIGHLY CONFIDENTIAL]** **[END HIGHLY CONFIDENTIAL]**. Similarly, as we have explained, Verizon's demand for DS3 special access services declined **[BEGIN HIGHLY CONFIDENTIAL]** **[END HIGHLY CONFIDENTIAL]**. Customers are "migrating from" legacy services, like the DS1 and DS3 services at issue here, to newer services offered by a variety of competitors.[4]

Indeed, as tw telecom has acknowledged, "the reality is that DS1s and DS3s are going down," in favor of those newer services.[5] Windstream, likewise, acknowledges a "slowdown in . . . traditional TDM circuit adds," as its effort is, instead, "focused" on providing those newer services to customers.[6]This is particularly true with respect to wireless backhaul, where there has been a "large-scale 'mass migration'" away "from TDM," in favor of newer, higher-capacity services.[7] That migration

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[4] Roopashree Honnachari, Frost & Sullivan, *Demystifying Carrier Ethernet Services: No One Size Fits All*, BCS 5-02, at 1 (Apr. 6, 2011).

[5] *Q4 2011 TW Telecom Inc. Earnings Conference Call – Final*, FD (Fair Disclosure) Wire, Transcript 020912a4716828.728 (Feb. 9, 2012) (statement by tw telecom chairman, president and CEO Larissa Herda).

[6] *Q3 2011 Windstream Corp Earnings Conference Call – Final*, FD (Fair Disclosure) Wire, Transcript 110411a4215638.738 (Nov. 4, 2011) (statement by Windstream Communications COO Brent Whittington).

[7] Insight Research Corporation, *Carrier and Ethernet Services: Public Ethernet in Metro & Wide Area Networks 2011-2016*, at 7 (Aug. 2011).

is fueled by dramatic increases in wireless data traffic,[8] further boosting demand for backhaul service and making it necessary to upgrade to higher-capacity facilities in all areas.

Wireless backhaul is available from a variety of competitors. Verizon Wireless **[BEGIN HIGHLY CONFIDENTIAL]**

[END HIGHLY CONFIDENTIAL].[9]

As Level 3 recently explained, 4G data services are "really the catalyst" for this shift away from TDM services for wireless backhaul.[10] Sprint, for example, acknowledges that, while it once "w[as] basically a T1 organization," it now has "the opportunity to use fiber or microwave and we choose site by site," giving Sprint "a very much improved cost structure."[11] Sprint has said it will use 25 to 30 significant backhaul providers, including ILECs, cable MSOs, and CLECs, to deliver Ethernet predominantly over fiber.[12] MetroPCS, despite suggesting that DS1 and DS3 services will underlie its 4G wireless services,[13] is moving to replace "T1 circuits" with its own "microwave back haul network," which is "key for data throughput" necessary for 4G services.[14] And T-Mobile, which began moving away from DS-1s to save capital as early as 2010, has a plan to reduce its backhaul costs by 90 percent, transitioning entirely off of DS1s and on to all-IP backhaul by the end of 2013.[15]

Verizon offers higher-capacity enterprise-level broadband services, which are not subject to regulation, through private contracts. Although Verizon generally does not discount its special access

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[8] Commission staff reported that "mobile data demand is expected to grow between 25 and 50 times current levels within 5 years." FCC Staff Technical Paper, *Mobile Broadband: The Benefits of Additional Spectrum*, at 5 (Oct. 2010), *available at* http://hraunfoss.fcc.gov/edocs_public/attachmatch/DOC-302324A1.pdf.

[9] *See Competition Data Requested in Special Access NPRM*, Public Notice, 26 FCC Rcd 14000, at Attachment A (2011).

[10] Carol Wilson, *Level 3: Mobile Backhaul Brutally Competitive*, Light Reading (Oct. 7, 2011) (video of interview with Amanda Tierney, VP Wholesale Market Management, Level 3, http://www.lightreading.com/video.asp?doc_id=213138).

[11] *Sprint 4G Strategy/Network Update – Final*, FD (Fair Disclosure) Wire, Transcript 100711a4207432.732 (Oct. 7, 2011) (statement by Sprint Nextel president of Network Operations & Wholesale Steve Elfman).

[12] *See* Anna-Maria Kovacs, *Regulation in financial translation: the importance of current data in the FCC's special access proceeding*, at 27, (June 4, 2012), *available at* http://www.gcbpp.org/files/EPV/FCC_Special_Access_Proceeding.pdf.

[13] *See* MetroPCS Petition to Reject or Suspend and Investigate Proposed Tariff Revisions, Tariff Transmittal No. 1187, at 6-7, 10-11 (May 7, 2012).

[14] Thomson Reuters StreetEvents, *Edited Transcript: PCS – Q1 2012 MetroPCS Communications, Inc. Earnings Conference Call*, at 4 (Apr. 26, 2012) (statement by MetroPCS chairman & CEO Roger Linquist).

[15] *See* Kovacs, *supra* at 26 (citing *T-Mobile Investor Day, January 20, 2011*, at slide 21, http://www.telekom.com/static/-/9414/1/1101920-investor-day-us-2011-presentation-si).

services based on the purchase of these non-regulated higher-capacity services, some of Verizon's contracts for higher-capacity enterprise broadband services offer discounts **[BEGIN HIGHLY CONFIDENTIAL]** **[END HIGHLY CONFIDENTIAL]** Verizon generally allows its customers to switch from DS1 and DS3 services to higher-capacity services that Verizon offers, regardless of the number of circuits the customer wants to transition. These services are more efficient for Verizon and its customers, and if certain conditions are met we also will waive termination liability charges in our discount plans when customers upgrade to higher bandwidth services. Verizon also often includes similar provisions in the contracts it offers through its CLEC entity.

Out of Region

Verizon's non-ILEC affiliates sell DS1 and DS3 services outside of Verizon's ILEC territory through contracts. These contracts ordinarily include term or volume based discounts. In most cases, the volume-based discounts are based upon the customer's commitment to spend a certain amount with Verizon, rather than on the number of circuits in service. These spending commitments are often bundled with other types of services, as well. And Verizon also offers "achievement credits," through which it offers customers additional discounts or credits when they exceed their spending commitments. Verizon does offer month-to-month standard pricing, but most of Verizon's out-of-region customers contract for discounted rates.

Verizon also often leases dedicated high-capacity facilities from other providers outside of its ILEC territory to supplement its own network. The marketplace for these facilities is dynamic and competitive, and Verizon purchases dedicated high capacity from a large number of vendors and from different types of suppliers such as ILECs, CLECs, and cable providers. Verizon generally bases its purchase decision in this competitive environment on the overall price and quality of the available offers. Although Verizon occasionally purchases special access on a month-to-month basis, it typically subscribes to discount plans that have either term or term and volume commitments. In exchange for the certainty regarding volumes and other benefits that these commitments provide to our suppliers, those suppliers are able to offer Verizon reduced pricing on DS1 and DS3 special access services. Furthermore, discount plans with national scope, or at least with a wide geographic scope, allow Verizon to maximize its ability to add circuits in some locations and subtract them in others, and they simplify operational logistics by minimizing the number of vendors with which Verizon interacts.

Data Questions

In recent meetings, Staff raised some questions, and we are now able to provide additional information that required further research.

Q: At what level of granularity can Verizon retrieve special access revenue information?
A. The most granular level at which Verizon's ILECs can do so without an extensive manual effort is at the wire center.

Q: How much of its special access services does Verizon provide on copper and how much on fiber?
A: **[BEGIN CONFIDENTIAL]** **[END CONFIDENTIAL]** of our DS1 services are currently provisioned on fiber, and the remainder is provisioned on copper. All of our DS3 services are provisioned on fiber.

Q: Could Verizon use information that it provides to bill auditing services as a potential information source for the anticipated upcoming data request?
A: Although Verizon does use third-party bill auditors for bill verification in some cases, the auditors look at only some of the bills we receive, and only a small portion of those bills. They would not be a complete and reliable source for the vendor-related data the Commission plans to seek when it issues a mandatory data request.

Q: Could Verizon determine the percentage of collocations that have fiber from non-affiliates?
A: Verizon cannot determine the percentage of its collocations that include fiber-based collocations from non-affiliates without a burdensome, manual effort involving physical inspections of wire centers.

Q: When Verizon first applied for pricing flexibility, it used the 1992 MSA definitions, as the FCC's rules require. What MSA definitions did Verizon use in its filings?
A: Verizon's response to the Second Data Request used the 2009 MSA definitions, in order to be consistent with the definitions the Commission used in the data request.

Verizon seeks confidential treatment of the specific demand data and other commercially-sensitive information supplied above under the *Modified Protective Order*[16] and, as appropriate, under the *Second Protective Order* (marked "highly confidential").[17] In addition, this information is entitled to confidential, non-public treatment under the Freedom of Information Act (FOIA) and related provisions of the Commission's rules.[18] These data constitute sensitive commercial information related to special access services between Verizon and other providers. The Commission has consistently held that similar data satisfy the requirements of FOIA Exemption 4 (trade secrets or commercial/financial information).[19] In addition, Verizon treats these data as confidential. As in the *Cox* case, Verizon does

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[16] *See Special Access for Price Cap Local Exchange Carriers*, Modified Protective Order, 25 FCC Rcd 15168 (2010) ("*Modified Protective Order*"); *see also* Letter from Sharon Gillett, Wireline Competition Bureau, to Donna Epps, Verizon, 27 FCC Rcd 1545 (2012).

[17] *See Special Access for Price Cap Local Exchange Carriers*, Second Protective Order, 25 FCC Rcd 17725 (2010) ("*Second Protective Order*").

[18] *See* 47 C.F.R. §§ 0.457 and 0.459; 5 U.S.C. § 552, *et seq.*

[19] *See, e.g., Cox Communications, Inc.*; *Request for Confidentiality for Information Submitted on Forms 325 for the Year 2003*, 19 FCC Rcd 12160, ¶ 6 (2004) ("*Cox*"); *see also Comcast Cable Communications, Inc.*; *Request for Confidentiality for Information Submitted on Forms 325 for the Year 2003*, 19 FCC Rcd 12165, ¶ 6 (2004); *Time Warner Cable*; *Request for Confidentiality for Information Submitted on Forms 325 for the Year 2003*, 19 FCC Rcd 12170, ¶ 5 (2004); and *Altrio*

not customarily release this information to the public.[20] Verizon also limits the internal circulation of this information to only those with a "need-to-know."[21]

Moreover, information in the possession of a public entity is considered to be "confidential" if disclosure is likely to substantially harm the competitive position of the person from whom the information was obtained.[22] That is the case here. Verizon is subject to actual and potential competition with respect to all special access services; therefore, public disclosure of this data could harm Verizon in a number of ways. This information would, for instance, give actual and potential competitors information about the extent to which Verizon is succeeding in the marketplace that is not otherwise publicly available.

Sincerely,

Maggie McCready

Maggie McCready

Copies: Deena Shetler (redacted version)
Nick Alexander (redacted version)
Eric Ralph (redacted version)
Andrew Mulitz (highly confidential and confidential versions)

Communications, Inc.; *Request for Confidentiality for Information Submitted on Forms 325 for the Year 2003*, 19 FCC Rcd 12176, ¶¶ 4-5 (2004).

[20] *Cox*, ¶ 5.

[21] *Id.*

[22] *See National Parks and Conservation Ass'n v. Morton*, 498 F.2d 765, 770 (D.C. Cir. 1974); and *Critical Mass Energy Project v. Nuclear Regulatory Commission*, 975 F.2d 871, 873 (D.C. Cir. 1992).